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No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

IN RE KEVAN H. GILMAN ON DISCIPLINE

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE

SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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40 pp

QUESTIONS PRESENTED

1. Does an accused attorney have a constitutional right to be present and to be heard in an attorney disciplinary proceeding?

2. Is a state statute which suspends an attorney for failure to file a response by a specific date until the conclusion of a disciplinary proceeding a denial of due process of law?

3. Is a rule of procedure which deems allegations admitted if a response is not timely filed a denial of due process of law?

4. Is a State Supreme Court which appoints employees to a private party, and by finding against the other party obtains monies for their appointees' employer to pay their appointees' salaries and benefits, a lack of a fair and impartial adjudicator, especially in light of the party's bankrupt status?

5. Is the administrative decision-making by one who

obtains monies to pay his salary and benefits and those of his co-employee prosecutors and investigators when he is without alternative funds to pay these salaries and benefits a denial of a fair and impartial adjudicator in violation of fundamental due process of law?

6. Is the employment, housing, training, providing of staffs, facilities, expenses, offices, pay and benefits to an administrative decision-maker by a privately financed party a denial of a fair and impartial adjudicator in violation of fundamental due process of law?

7. Is the issuance of summary orders per curium with no causes stated denying review to accused attorneys concerning recommendations of suspension issuing from a State Supreme Court's appointees to a private, financially interested party and summarily denying recusal for interest in the outcome the abdication of

judicial duty and power to private persons which offends due process of law?

8. Is a prosecution by a privately financed party which is bankrupt which secures funds to pay the prosecutor, judge, and investigators' salaries a denial of due process of law?

LIST OF PARTIES

The parties are as follows:

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TABLE OF CONTENTS

Page

Questions Presented.....i

List of Parties.....iv

Introduction.....1

I. Orders Below.....2

II. Jurisdiction.....2

III. Constitutional and Statutory Provisions Involved.....3

IV. Statement of the Case.....4

V. Reasons for Granting the Writ.....12

I. The Involuntary Inactive Enrollment Statute Taking an Attorney's License for Over a Year for Failing to File a Piece of Paper within Twenty Days Presents Due Process Concerns of National Import.....12

II. Does an Attorney have a Constitutional Right to be Present and to be Heard in an Attorney Disciplinary Proceeding?.....15

III. Deeming Allegations Admitted as a Matter of Law Offends Due Process of Law.....18

IV. The State Supreme Court's Delegation of its Judicial Power to a State Legislature and a Private Person Denies Due Process and Equal Protection of the Law.....19

V. The Lack of a Fair and Impartial Adjudicator within the California Attorney Disciplinary System Poses Due Process Problems.....22

B. A Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning the Licensing of a State's Attorneys.....22

B. Administrative Adjudicators Selected, Hired, and Employed by a Party is a Lack of a Fair and Impartial Adjudicator.....24

C. Administrative Adjudicators Selected, Hired, and Employed by a Party which is the Exclusive Financial Beneficiary of Findings Against Accuseds denies a Fair and Impartial Adjudicator.....25

VI. Is not a Prosecution Financially Tainted When Monies from it are Needed for Salaries?.....26

Conclusion 28

Table of Authorities

Cases

Aetna Life Insurance Company v. La Voie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) 2,23
Barry v. Barchi 443 U.S. 55, 62 n. 10, 99 S.Ct. 2642-2648, n. 10, 61 L. Ed. 2d. 365 (1979) 15
Berger v. United States 295 U.S. 78, 88, 55 S. Ct. 628, 79 L. Ed. 1314 (1935) 26
Cummings v. Missouri, 4 Wall. 277 14
Ex Parte Garland 4 Wall. 333 14
Harmelin v. Michigan 501 U.S.___, n.9, 111 S.Ct. 2680, 2693, n. 9, 115 L.Ed. 2d. 836 27
Keller v. State Bar of California, 496 U.S. 1, 110 S. Ct. 2228, 110 L.Ed 2d. 1 (1990), overruling 255 Cal.Rptr. 542 (1989) 21
Local Lodge 1297 v. Allen, 22 Ohio St. 3d 228, 490 N.E. 2d 865, 867 (1986) 17
Matter of Ross, 668 P. 2d. 10989 (1983) 25
Shaw v. Garrison 467 F. 2d. 113 (5th Cir. 1972), cert. denied 409 U.S. 1024, 93 S. Ct. 467, 34 L.Ed. 2d. 317 (1972). .. 26
State ex rel Oklahoma Bar Association v. LoBaugh (1988) 781 P. 2d. 806 16
United States v. Good 114 S. Ct. 492 (1993) 27
United States v. Lovett, 328 U.S. 303, at 447-449 14
United States v. Raddatz 447 U.S. 667, 100 S. Ct. 2406, 65 L. Ed.2d 424 (1980) 19
Vasquez v. Hillery 474 U.S. 254, 263-264 (1986) 27
Ward v. Village of Monroeville 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d. 267 (1972) 24
Young v. United States ex rel Vuitton Et. Fils S.A. 481 U.S. 787, 107 S.Ct. 629, 79 L. Ed. 1314 (1987). 26,27

United States Constitution

Fourteenth Amendment 3

California Constitution

Article 6, section 1 3
Article 6, section 9 3

United States Statutes

27 USCA s. 1257(3) 2

California Business and Professions Code

Section 6002.1 12
Section 6007(e)(1) 4,13
Section 6007(e)(2) 4,13
Section 6007(e)(3) 4,14
Section 6079.1 4
Section 6079.5 4
Section 6086.5 4
Section 6065.10 4
Section 6086.65 4

State Bar Rules of Procedure

Rule 200(d) 15,18

Books and Articles

"Bar Employees Pack It In as Shutdown Deadline Arrives," by Don DeBenedictis, Los Angeles Daily Journal, June 29,1998, page. one 5
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PETITION FOR WRIT OF CERTIORARI TO

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Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of California, docket no. S068216 entered on June 10, 1998. Appendix A.

This Petition is filed to address the issues of whether the United States Constitution requires that an accused attorney be afforded the right to be present and defend his license to practice law, the abdication of judicial responsibility by a Court by it delegating its judicial power to a legislature and non-judicial person, takings of licenses to practice law by state statutes with

no hearing, cause, or prompt, post-taking final adjudication, financially motivated prosecutions and adjudications by a now bankrupt State Bar of California, and this Court's decision in **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) concerning the requirement of a fair and impartial adjudicator within a State Supreme Court.

"State Bar" hereinafter refers to the State Bar of California. Unless otherwise indicated, "Sections" refers to sections of the California Business and Professions Code.

I.

ORDERS BELOW

The summary judgment of the California Supreme Court reproduced at Appendix A. The recommendation of the hearing judge of the State Bar Court of the State Bar of California is reproduced at Appendix B.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27

U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of California on June 10, 1998. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Art. 6, sec.1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts."

Art. 6, sec. 9: "The State Bar of California is a public corporation...."

State Statutes:

The state statutes at issue are California Business and

Professions Code sections 6007(e), 6079.1, 6079.5, 6086.5, 6086.10, and 6086.65(a). They are set forth at Appendix E.

IV.

STATEMENT OF THE CASE

The California Supreme Court created with the State Bar of California, pursuant to statute, a State Bar Court of the State Bar of California, to handle attorney disciplinary matters. California attorneys are regulated by both the legislative and the judicial branches of government. The California Supreme Court has deferred to the legislative branch of government in the area of regulation of attorneys.

Pursuant to state statute, the California Supreme Court appoints and has appointed ten employees to the State Bar of California to be its judges. It also removes or reappoints these judges. The California Supreme Court's appointees are paid their mandated salaries and benefits from the available private revenues of the State Bar of California.

The State Bar of California is bankrupt.[1] It continues to

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1 Due to the fact the State Bar of California is a legislative creation, in October, 1997 the Governor of the State vetoed the bill authorizing it to collect mandatory dues in excess of $77.00 per compelled attorney member. "Future of the State Bar Back Where it Started in 1927," by Kathleen O. Beitiks, California Bar Journal, January, 1998, at 1. "Under the Governor's proposal, the mandatory bar would consist of a discipline system, the ethics hotline and several other core functions....and the State Bar Court would be shifted to the Supreme Court... Under the governor's proposal, the bar's entire governing board would be appointed by the governor and the Legislature." "Governor Steps into Fee Bill Debate," The California Lawyer, In Brief, June , 1998, vol. 4, No. 3. "Senator Quentin Kopp's bill would transfer admissions, discipline, administration of the MCLE program and the Client Security Fund from the State Bar to the Administrative Office of the Courts (AOC).... **Chief Justice (of the California Supreme Court) Ron George has consistently opposed the idea of transferring the regulation of the legal profession to an already overburdened AOC."** (emphasis added). "The Kopp bill should be defeated," by Jeffrey Tidus, California Bar Journal, March, 1998. As stated on June 29, 1998, on page one of the Los Angeles Daily Journal, in an article entitled, "Bar Employees Pack It In as Shutdown Deadline Arrives," by Don DeBenedictis, "More than 400 employees of the State Bar of California spent Friday morning packing up their personal belongings and collecting their final paychecks....About 180 bar employees will be on the job this week, out of a one-time high of about 750." "Denying an emergency stay of execution to the embattled State Bar of California, the Supreme Court late Wednesday refused to order the state's lawyers to pay additional, interim dues of $287 this year. Instead, the court offered Chief Justice Ronald M. George to help the State Bar, the governor's office and the Legislature resolve the eight-month-long impasse over the Bar's future....the court said it was requesting that George make himself available to assist those parties in reaching a resolution. Six of the court's justices agreed to turn down the bar's request. ..George was traveling and could not be reached to comment on the offer for him to help negotiate... [O]ne staunch bar opponent, Sen. Quentin Kopp, I-San Francisco, was unimpressed with the offer of George's services. It would be inappropriate for the chief justice to intervene in a legislative matter, just as it would be for the Legislature to intervene in a pending court case, he said. Kopp had introduced a bill to abolish the State Bar and turn its core functions over to the Supreme Court and the Administrative Office

function by finding accused attorneys culpable of misconduct warranting the imposition of public discipline and assessing enhanced administrative costs on each accused attorney, so as to pay the salaries and benefits of its judges, prosecutors, and investigators.[2] It is the prosecuting party in disciplinary

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of the Courts, but George had resisted the idea. **"So I'm not interested in the chief justice's offer because he's already indicated the court's unwillingness to assume its rightful function,"** (emphasis added) Kopp said." "Let George End Bar Crisis, Says Supreme Court, " by Don J. DeBenedictis, Los Angeles Daily Journal, June 25, 1998, page 1.

2 In response to its financial crisis the Board of Governors increased the costs it imposes on publically disciplined attorneys instead of cutting costs. As stated in "Bar Governors End Meeting Without Cutting Costs," Los Angeles Daily Journal, February 10, 1998, page 3, by Don J. DeBenedictis, "A divided State Bar Board of Governors... approved several proposals aimed at increasing the amount of prosecution costs the bar recovers from the lawyers it disciplines. What they did not do was propose any ideas to trim the bar's crisis-imperiled budget... " As stated in the April, 1998 issue of The California Lawyer, "Attorneys disciplined in the future will be assessed costs according to a revised formula which has been updated to reflect the bar's current expenses... The revisions expand the bar's ability to recover disciplinary costs, in addition to updating the cost-assessment formula." "New Formula to assess discipline costs, collect additional fees." The California Lawyer, April, 1998. "GOP Senators Claim Votes to Re-write Bar Bill," by Don DeBenedictis, Los Angeles Daily Journal, May 21, 1998, page 1, stated that, "...the (Leslie) amendments also appear to delete the section of state law that allows the bar to demand that disciplined lawyers reimburse the bar for the costs of their prosecution. Earlier this year, bar governors approved steps to increase the amount of such costs collected."

proceedings. The appointed judges are employed, housed, trained, paid and provided their salaries, facilities, offices, retirement, and benefits by the State Bar of California and from its private funds. Those funds include the assessments they make upon finding attorneys guilty of professional misconduct. The judges and prosecutors are co-employees who are housed, trained, paid and provided their benefits from the same privately financed employer which is the exclusive financial beneficiary of findings of guilt of accused attorneys.

For the years 1989, 1994, and 1995, the California Supreme Court appointed fifteen employees to the State Bar. Their appointees are denominated judges of the State Bar's Court. There are six hearing judges. The hearing judges are required by statute to be paid $98,070.00 a year. There are three review department judges. Two are lawyers and one is a non-lawyer. The Presiding Judge of the Review Department is required to be paid a base salary of a Superior Court judge- $107,390. The Review Department part-time attorney judge and

its non-lawyer and lay judge are required to each be paid $53,695.00 a year.

Since its appointment of employees to the State Bar in 1989, the California Supreme Court has declined to grant review to any accused attorneys. Its appointees to the State Bar prepare the California Supreme Court's summary order. This summary order for the signature of the Chief Justice of the California Supreme Court is prepared and sent with the appointees' transmittal to the California Supreme Court of its recommendation as to discipline. Appendix C. As in this case, any petition and motion submitted by the accused attorney to the California Supreme Court is not addressed. The summary order is already prepared for signature before the accused attorney files anything. The filings of the accused attorney are ignored and never addressed. Appendices A and C.

The petitioner participated in each status and settlement conference concerning the two notices of disciplinary charges. He neglected to file a written response to each within the twenty

days provided. Upon entry of his default, and pursuant to state law, he was enrolled as an inactive member of the State Bar involuntarily when active membership is required in order to practice law. The taking is deemed administrative and no hearing is required. By state law, unless the default is set aside, the taking of the license continues until the conclusion of the attorney disciplinary process. The attorney's motion to set aside his default was denied by a State Bar judge without hearing. By state bar rule of procedure, a default deems the allegations of the notice of disciplinary charges admitted.

The allegations were refuted by judicial notice of the State Court of Appeals decision finding that the attorney was not the attorney for the client[3] and the court records indicating that the

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3 Refer State Bar Exhibit K, Transcript of July 31, 1997, page 4:8-15, 5:21-24 wherein the following was stated at the hearing:

KEVAN GILMAN: ... there is now a Court of Appeal ruling, that was attached to the motion, stating that, as a matter of law, I was not an attorney of record for the complainant at the time the events occurred, that there is no new evidence, and that the complaint should be dismissed immediately. I think uh uh as a prosecutor she has a duty to dismiss now that she knows there was no wrong doing on my part, and it's also in the interests and is the right thing to do....Miss Anderson is aware that the court of appeal has ruled

attorney was not served with notice of an order.[4] Appendix D. The State Bar Judge refused to take judicial notice, recommended a sixty day actual suspension, and took the attorney's license by operation of state law for over eleven months and sixteen days.

The attorney filed his Petition for a Writ of Review and to Terminate Inactive Enrollment with the California Supreme Court with his motion for the recusal of the California Supreme Court. It signed the prepared order that had been transmitted to it by the State Bar adding the first sentence summarily denying the motion

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that I was not the complainant's attorney at the time the wrong-doing occurred. And I believe we should put an end to this matter here and now.

JUDGE WATAI: Uh, now, you may be seated. ....

...

KEVAN GILMAN: "Yes, your Honor, but can I ask why, as a matter of law, this case isn't dismissed now? We've had the Court of Appeal ruling?"

JUDGE WATAI: "No, I can't tell you why as a matter of law, I have not gone into this and I don't know."

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The decision of the hearing judge states that the attorney did not receive notice from the court of the sanctions order so as to pay it or report it. It states, "There is no indication in this record that any steps were taken to notify Respondent of the March 1996 sanctions order when it issued, nor was Respondent's contemporaneous knowledge of that order pled by the 97-(sic 96)-NODC." Appendix B-20. It finds that "Respondent did not report the March 25, 1996... sanctions order to the State Bar." Appendix B:21.

for recusal and the Petition for a Writ of Review and to Terminate Inactive Enrollment. It did not address the constitutional issues presented. It imposed an additional sixty day actual suspension making the recommended actual sixty day suspension transformed into an actual one year, three months, and fifteen day actual suspension.

The petitioner respectfully requests that this Honorable Court address the significant and substantial United States Constitutional issues of whether a license to practice law may be taken by legislative act without hearing or cause of professional misconduct, whether due process requires that an attorney be permitted to appear and defend his license to practice law, whether a recommended sixty day actual suspension may be prolonged to over one year, three months, and fifteen days by the delegation of judicial power to a state legislature and private person, whether due process is offended by financially motivated prosecutions and adjudications, and what relationship between a judge and a party disqualifies the judge from participation in a

case.

V.

REASONS FOR GRANTING THE WRIT

I.

The Involuntary Inactive Enrollment Statute Taking an Attorney's License for Over a Year for Failing to File a Piece of Paper within Twenty Days Presents Due Process Concerns of National Import

The California attorney disciplinary system is legislative, not judicial. The state statute at issue authorizes the automatic taking of a license to practice law by legislative fiat. It approximates a prohibited bill of attainder. It provides that, "The board (of Governors of the State Bar of California) shall order the involuntary, inactive enrollment of a member whose default has been entered pursuant to the State Bar Rules of Procedure if both of the following conditions are met: (A) The notice was duly served pursuant to subdivision (c) of section 6002.1, (B) The notice contained the following language at or near the beginning of the notice, in capital letters: IF YOU FAIL TO FILE AN

ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE."[5] Another state statute[6] provides that, "The board (of Governors of the State Bar of California) shall terminate the involuntary

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5 California Business and Professions Code section 6007(e)(1).

6 California Business and Professions Code section 6007(e)(2).

inactive enrollment of a member under this subdivision when the member's default is set aside on motion timely made under the State Bar's Rules of Procedure or the disciplinary proceedings are completed."

The taking of a vested license to practice law of an attorney is described by the statute as follows: "The enrollment under this subdivision is administrative in character and no hearing is required."[7] No hearing was conducted.

The United States Constitutional issue presented is whether due process is violated by a taking of a license to practice law by operation of a state statute and when there is no hearing, no cause based on professional misconduct, and no provision for a prompt, post taking final adjudication?

Pursuant to **Cummings v. Missouri,** 4 Wall. 277 and **Ex parte Garland** 4 Wall. 333, **United States v. Lovett,** 328 U.S. 303, at 447-449, is not the statute a taking of property of ascertainable members of a group in such a way so as to inflict

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[7] California Business and Professions Code section 6007(e)(3).

punishment on them without a judicial trial? Is not the denial of access to the California Supreme Court for over eleven months following the taking a denial of a prompt, post-taking final adjudication as set forth by this Honorable Court in **Barry v. Barchi** 443 U.S. 55, 99 S.Ct. 2642, 61 L. Ed.2d. 365 (1979)?

II.

Does An Accused Attorney have a Constitutional Right to be Present and to be Heard in an Attorney Disciplinary Proceeding?

This Honorable Court has established that attorneys have constitutional rights to notice, hearing, rights to confront and cross-examine one's accusers, and licensing by the judicial branch of government prior to deprivation of a license to practice law. Does an attorney have a right to have his default set aside prior to hearing,[8] so that he may be present and exercise those

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8 Within the forty five days provided by the State Bar Rules of Procedure Rule 203 (c)(1), the attorney filed his motion to set aside his default and to terminate the inactive enrollment which had been entered for his failure to timely file his response. The motion was denied. The rule provides that, "A respondent whose default has been properly entered .... may make a motion under this paragraph to set aside the default on the grounds of mistake, inadvertence, surprise or excusable neglect....(1) Any motion under this paragraph shall be filed as soon as practical, and in no event later

constitutional rights prior to a taking of his license to practice law?

The Oklahoma Supreme Court in **State ex rel Oklahoma Bar Association v. LoBaugh** (1988) 781 P. 2d. 806, held that, "We are presented with a question of first impression: whether the trial panel of the Professional Responsibility Commission may, in the absence of the lawyer who has been accused of violations of the Code of Professional Responsibility, conduct disciplinary proceedings and impose discipline when the lawyer appears before the proceedings are concluded and moves to reopen the hearing. We find that it may not. ..."[9]

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than forty five (45) days after service of notice of entry of default."

[9] The Oklahoma Supreme Court held that, **State ex rel Oklahoma Bar Association v. LoBaugh**, supra, at 809, "Before a lawyer can be disbarred or suspended from the practice of law, the lawyer has a right to an opportunity to be heard. Lawyers are admitted to the bar for something more than private gain. They become officers of the Court and, like the Court itself, instruments to advance the ends of justice. The power of discipline is necessary for the protection of the public in order to strip a lawyer of the implied representation by courts that the lawyer who is allowed to hold himself/herself out to practice before them is in good standing to do so....A license to practice law is a privilege burdened with conditions. However, it is neither a matter of grace and favor nor a mere indulgence, but rather a right which cannot be capriciously revoked at the pleasure of the

This Court should decide the significant issue as to whether the reasoning of the Oklahoma Supreme Court controls or whether the California Supreme Court's denial of the right of an attorney to be present and to be heard is dispositive of the due

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Court. As long as a lawyer complies with the Code of Professional Responsibility, the privilege remains intact. n6 - - - - The right to be heard is mandated by the United States Constitution and the Oklahoma Constitution. Even if the lawyer failed to adequately present the denial of due process ...where, as here, the record reveals that the trial panel failed to recognize the lawyer's right to be heard, this plain error requires review by this court to remedy a manifest miscarriage of justice. **Local Lodge 1297 v. Allen**, 22 Ohio St. 3d 228, 490 N.E. 2d 865, 867 (1986)..." This is a novel question of law insofar as disciplinary proceedings are concerned... Disciplinary and disbarment proceedings are very serious business and ample opportunity must be afforded to show cause why an accused practitioner. should not be disbarred... Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. .. It is the 'law of the land' that no person's life, liberty or property be forfeited as a punishment in the absence of due process. ...Because disciplinary proceeding partake of both civil and criminal elements, this Court has considered them to be special in nature and sui generis...However, many jurisdictions hold that disciplinary proceedings because of their adversarial nature, are quasi-criminal, and have applied the full panoply of constitutional safeguards afforded accused criminals to lawyers faced with disciplinary proceedings. ..A leading principle of criminal procedure is that after the indictment is found, nothing shall be done in the absence of the accused. ..Regardless of whether courts considering the issue have held the proceeding to be sui generis or quasi-criminal in nature, they are in complete agreement that due process must be afforded because of the possible punishment and penalties imposed. Due process in disciplinary proceedings contemplates a fair and open hearing before a trial panel with notice and an opportunity to present evidence and argument, representation by counsel, if desired, compulsory process for obtaining favorable witnesses, information concerning the claims of the opposing party, reasonable opportunity to be heard, and the right to confront the unfavorable witnesses. ..."

process rights of an attorney concerning his right to appear and defend his license to practice law.

III.

Deeming Accusations Admitted as a Matter of Law Offends Due Process of Law

The California State Bar Rules of Procedure, Rule 200(d) states, "Upon entry of default: (1) unless the default is vacated: (A) The factual allegations set forth in the notice of disciplinary charges shall be deemed admitted, unless otherwise ordered by the Court based on contrary evidence, and no further proof shall be required to establish the truth of such facts." There was no hearing, no witnesses, and no evidence presented in support of the taking of the attorney's license to practice law.

Judicial notice of both the hearing judge's decision and the transcript of a prior hearing and of the State Court of Appeals' decision in the attorney's favor indicate there was no culpability of professional misconduct and the attorney was required to be exonerated as a matter of law. Refer footnotes 3 and 4.

Is the deeming of allegations as admitted with no requirement of actual evidence, hearing, witnesses, and proof consonant with the requirements of due process of law?

IV.

The State Supreme Court's Delegation of its Judicial Power to a State Legislature and a Private Person Denies Due Process and Equal Protection of the Law

This Honorable Court held in **United States v. Raddatz**, 447 U.S. 667, 65 L.Ed. 2d 424, 100 S. Ct. 2406 (1980) that judges may not abdicate their judicial duties and powers to non-judicial persons without violating basic due process of law. The refusal of the California Supreme Court to perform its judicial duties concerning the licensing of the State's court officers has caused it to be the subject of criticism, derision, and disrespect within the State. "Chief Justice (of the California Supreme Court) Ron George has consistently opposed the idea of transferring the regulation of the legal profession to an already

overburdened AOC. (Administrative Office of the Courts)."[10] "[O]ne staunch bar opponent, Sen. Quentin Kopp, I-San Francisco, was unimpressed with the offer of George's services. It would be inappropriate for the chief justice to intervene in a legislative matter, just as it would be for the Legislature to intervene in a pending court case, he said. Kopp had introduced a bill to abolish the State Bar and turn its core functions over to the Supreme Court and the Administrative Office of the Courts, but George had resisted the idea. **"So I'm not interested in the chief justice's offer because he's already indicated the court's unwillingness to assume its rightful function,"** (emphasis added).[11]

The vacuum created by the California Supreme Court's refusal to license the state's lawyers has created the over regulation of attorneys by the legislative and executive branches

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10 "The Kopp bill should be defeated," by Jeffrey Tidus, California Bar Journal, March, 1998.

11 "Let George End Bar Crisis, Says Supreme Court, " by Don J. DeBenedictis, Los Angeles Daily Journal, June 25, 1998, page 1.

of government, so that the State's attorneys are in fact regulated by the legislature and soon the executive branches of government, since the judiciary has no interest in the same.

The delegation by the California Supreme Court of its judicial duties to the state legislature and the latter's creation, the State Bar of California,[12] has resulted in a taking of an innocent attorney's seventeen year licence to practice law for one year, three months, and fifteen days and state-wide opprobrium, disrespect, dishonor, and loss of the right to work and earn a livelihood for over one and a quarter years with two years of probation and several thousand dollars of costs required to be paid to the State Bar to allay its financial crisis.[13]

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12 As stated by this Honorable Court in **Keller v. State Bar of California,** 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed 2d. 1 (1990), overruling 255 Cal. Rptr. 542 (1989), at 13: "The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession."

13 Pursuant to Exhibits A and F, the California Supreme Court has ordered that the attorney pay $3,253.00 in administrative costs for the salaries and benefits of the State Bar's judge ($1,851.00), for the State Bar prosecutor ($628.00), and for the State Bar investigator ($ 774.00). The

Petitioner posits that the California Supreme Court's rubber stamping of each prepared order from a private party for over six years is unconstitutional as the unlawful delegation of the California Supreme Court's judicial power and abdication of its judicial duties toward its court officers in violation of the fifth amendment due process clause. Petitioner requests that this Honorable Court hear and decide the same.

V.

The Lack of a Fair and Impartial Adjudicator within the California Attorney Disciplinary System Poses Due Process Problems

A. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning The Licensing of a State's Attorneys

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice,

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State Bar charged $1,851.00 for the judge's salary for a non-existent trial which allegedly exceed one day of trial. Refer Appendix F-4.

clean, and true between the State and the accused, **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party, which is privately financed, and where by having it prepare its orders in advance of any filing by the accused attorney, it has delegated its judicial powers to it, and summarily denies all issues of all accused attorneys, and orders monies paid as "costs" to pay the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, such a situation of temptation to not hold the balance nice, clean, and true, that recusal of the California State Supreme Court Justices was and is required?

The motion for recusal of the California Supreme Court Justices raising these issues was not addressed, but was summarily denied. Appendix A.

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B. Administrative Adjudicators Selected, Hired, and Employed by a Party is A Lack of a Fair and Impartial Adjudicator

Pursuant to this Court's holding in **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed.2d.267 (1972), even if there were neutral review by the State Supreme Court, the fact that the adjudicatory proceedings in the lower levels lack a fair and impartial adjudicator denies to a party fundamental due process of law. A party has a constitutional right to a fair and impartial adjudicator in the first instance, *de novo* review being irrelevant.

Is not the employment, housing, training, providing of all staff, expenses, facilities, pay, expenses, and benefits for a judge by a privately financed party appearing before the judge such bias that the petitioner was denied a fair and impartial adjudicator at the hearing and review department levels within the state system?

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C. Administrative Adjudicators Selected, Hired, and Employed by a Party which is The Exclusive Financial Beneficiary of Findings Against Accuseds denies a Fair and Impartial Adjudicator

Three layers of awards are imposed on adjudged guilty attorneys: the salaries and benefits of the judge and his co-employee prosecutor and investigators, sanctions to fund the State Bar Client Security Fund, and forced enrollment in sections, examinations, schools, classes owned and run by the State Bar.

Proceedings conducted by members of a Board of a State Bar Association wherein they desired to recoup the Association's investigative costs by finding guilt of accuseds and imposing those costs upon the adjudged guilty attorneys were voided for lack of due process of law. **Matter of Ross** 656 P. 2d. 832, 838, 99 Nev.1 (Nev. 1983).

Is not the financial interest of the adjudicators when the private party is bankrupt and needs the administrative costs to pay salaries of judges, investigators, and prosecutors a sufficient taint to deny due process of law to an attorney who is thereafter

adjudged culpable of professional misconduct and assessed those sums of money by having been denied the right to appear and defend his license to practice law?

VI.

Is not a Prosecution Financially Tainted When Monies from it are Needed for Salaries?

A citizen has a constitutional right to be prosecuted only in good faith. It appears that a prosecutor is prosecuting in bad faith when he has an ulterior purpose of obtaining monies for one with whom he has a special relationship. His special relationship with the financial beneficiary taints his motive in prosecuting the accused. **Shaw v. Garrison** 467 F. 2d. 113 (5th Cir. 1972), cert. denied 409 U.S. 1024, 93 S. Ct. 467, 34 L.Ed. 2d. 317 (1972). See also **Berger v. United States** 295 U.S. 78, 88, 55 S. Ct. 628, 79 L. Ed. 1314 (1935). If a private attorney is disqualified to prosecute a contempt when he is the attorney for the client who is the financial beneficiary of such a prosecution, as occurred in **Young v. United States ex rel Vuitton Et. Fils S.A.** 481 U.S. 787, 107 S.Ct. 629, 79 L. Ed. 1314 (1987), an attorney who

prosecutes when all of the monies awarded from a guilty adjudication are paid to his private employer would also appear to be disqualified. [14]

The State Bar employees prosecute to obtain monies for their privately financed employer, which is bankrupt. Since the funds go to a multi-purpose private employer, rather than a governmental employer, this system is akin to prosecuting for a

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14 As stated in **Young, supra,** at 787, "A prosecutor may be tempted to bring a tenuously supported prosecution if such a course promises financial or legal rewards for the private client." "Prosecution by someone with conflicting loyalties 'calls into question the objectivity of those charged with bringing a defendant to judgment.' **Vasquez v. Hillery** 474 U.S. 254, 263-264 (1986)." **Young, supra**, at 786. In **United States v. Good** 114 S. Ct. 492 (1993), at 502, this Honorable Court stated, "'The purpose of an adversary hearing is to ensure the requisite neutrality that must inform all governmental decision making. That protection is of particular importance here, where the Government has a direct pecuniary interest in the outcome of the proceedings. See **Harmelin v. Michigan** 501 U.S.___, n.9, 111 S. Ct. 2680, 2693, n. 9, 115 L. Ed. 2d. 836 (opinion of Scalia, J). As stated by Justice Brennan in **Young, supra**, at 786, "Society's interest in disinterested prosecution... would not be adequately protected by harmless-error analysis, for such an analysis would not be sensitive to the fundamental nature of the error committed..... Between the private life of the citizen and the public glare of criminal accusation stands the prosecutor. That state official has the power to employ the full machinery of the state in scrutinizing any given individual. Even if the defendant is ultimately acquitted, forced immersion in criminal investigation and adjudication is a wrenching disruption of everyday life. For this reason, we must have assurance that those who wield this power will be guided solely by their sense of public responsibility for the attainment of justice."

private client who financially benefits from the prosecution. Since the State Bar prosecutors prosecute to obtain monies for their private employer, they have a conflict of interest in serving the Public and their private employer simultaneously.

Was not the prosecution of this attorney a bad faith prosecution which denied to him fundamental due process of law?

Conclusion

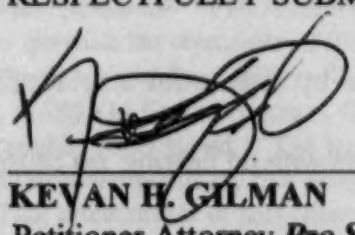
The California attorney disciplinary system is founded on regulation by the legislative branch of government. By statute, it provided that the attorney's seventeen year license to practice law was taken by statute for a total of one year, three months, and fifteen days with no hearing, no cause of professional misconduct, no evidence, no witnesses, no trial, and no court of law.

With judicial notice of the court records indicating that the petitioner attorney was required by law to be exonerated of the charges, is not this case of sufficient importance to prevent the same tragedy and travesty of injustice occurring to another attorney in the United States?

This Honorable Court, at this critical time of crisis within the attorney disciplinary system in the State of California, is requested to provide guidance to the California Supreme Court in the performance of its judicial duties toward its court officers, the Public, and the United States Constitution and of an concerning the prohibition of legislative takings of property of selected groups without judicial trials.

For the foregoing, the Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,



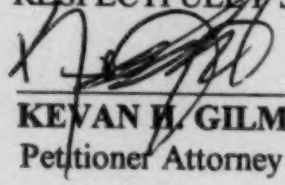
Dated: July 8, 1998

KEVAN H. GILMAN
Petitioner Attorney ***Pro Se***

Verification

I have read the foregoing Petition for Writ of Certiorari to the Supreme Court of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 8th day of July, 1998 at Van Nuys, California.

RESPECTFULLY SUBMITTED,



KEVAN H. GILMAN
Petitioner Attorney ***Pro Se***